

**TERMS OF REFERENCE
OF THE
SPECIAL AND INDEPENDENT INVESTIGATION COMMITTEE**

A Special and Independent Investigation Committee (“**the SIIC**”) has been appointed by the City Council of the Johannesburg Metropolitan Municipality in terms of Regulation 5(3) of the Disciplinary Regulations and Item 16(1)(b) of the Code of Conduct for Councillors. The SIIC is appointed to investigate the lawfulness or otherwise of the establishment of the Group Forensic and Investigation Services (“**GFIS**”), as well as allegations of improper and unlawful conduct on the part of GIFS.

Preamble

It is noted that various complaints were submitted to the Speaker’s Office, and were never reported to the Council. Instead, they were allegedly dismissed through various media statements and a press briefing that was organised by the former Executive Mayor, Speaker of Council and MMC for Corporate Services.

The said complaints relate to allegations of fraud, corruption, maladministration and breach of law by GFIS and others and, in particular, to the establishment of GFIS as a separate unit or department and its inherent powers without approval by the Municipal Council,¹ the appointment of the head of GFIS without compliance with the applicable recruitment processes, and the unlawful investigations conducted by GFIS against senior officials and Councillors.

The allegations also suggested that unlawful protection was being provided to the head of GFIS through, *inter alia*, the Executive Mayor’s failure to take action against the head of GFIS for certain unlawful conduct. The allegations are set out more fully below.

Now therefore, the SIIC has been established and empowered to inquire into, make findings and recommendations, and report on the following:

1. Allegations of fraud, corruption, maladministration and breach of law in the establishment of GFIS as a separate department, in particular-

¹ 1st Report to Mayor: **Nov 2016**; 2nd Report to Mayor: **3 Jan 2017**; Structural Placement Report: 22 March 2017; (3rd Report to Council, **26 April 2017**)

- 1.1. The alleged subversion of authority of Council and sanctioning the functions of GFIS as a separate department without its organizational structure and staff establishment having been approved by the Municipal Council as required by legislation.²
 - 1.2. The alleged subversion of authority of Council and sanctioning of the functions of GFIS as a separate department without its purported sub-delegations having been submitted and approved by the Municipal Council as required by legislation.³
 - 1.3. The alleged subversion of authority of the City Manager as the Head of Administration and Accounting Officer and sanctioning of reporting lines of GFIS to the Audit Committee which appears not to have supervisory and managerial powers in law.⁴
2. Allegations of fraud, corruption, maladministration and breach of law in the appointment of the head of GFIS, in particular-
 - 2.1. The alleged defrauding of Human Resource policies to ensure that an unqualified person is appointed in the junior position of a Unit Head in the Group Risk and Assurance Services (“GRAS”) department and later installed in the senior position of Group Head of GFIS without undergoing applicable recruitment processes to Heads of Departments (“HODs”), and his employment as an HOD having been approved by Council as required by legislation.⁵
 - 2.2. The alleged defrauding of remuneration policies and benefit schemes to ensure that the salary of the Group Head of GFIS increased from the R1.2 million to R1.8 million, and includes locomotive allowance, despite having been provided with a 24 hour VIP protection and transportation. Furthermore, that the report regarding his service conditions of employment

² Para 7.1 of annexure D to Council Resolution dated 5 September 2023 (“Council Resolution”)

³ *Id* para 7.2

⁴ Council Res, para 7.3 of annexure D

⁵ *Id* para 8.1

as an HOD were never approved by Council as required by legislation.⁶

2.3. The alleged defrauding of vetting processes to ensure that a person who does not have a top security clearance for a junior position of Unit Head in GRAS is installed in the position of Group Head of GFIS without obtaining such certificate as required by national legislation. And that he would proceed to operate as Group Head of GFIS for more than five (5) years and access sensitive and classified information without being security cleared.⁷

3. Allegations of fraud, corruption maladministration and breach of law regarding the implementation of rogue, clandestine and unlawful investigations by GFIS, in particular-

3.1. The abuse of power in launching of investigation into allegations against senior officials and councillors which were never unauthorised by the Municipal Council and the Disciplinary Board as required by applicable national legislation.⁸

3.2. The unlawful procurement and/or deployment of snooping device called the Digital Forensic Equipment (“DFE”) which is used to remotely access, intercepts and stores electronic information from various gadgets without authorisation.⁹

3.3. The unlawful sanctioning and performance of investigation functions that were not provided in the purported delegations of GFIS and through delegations that were never approved by the Municipal Council as required by national legislation.¹⁰

4. The following alleged acts of fraud, corruption and maladministration relating to the unlawful protection that was provided to the former Group Head of GFIS must be investigated. Also, in light of such protection having bred a culture of impunity in

⁶ Council Res, para 8.2 of annexure D

⁷ Council Res, para 8.3

⁸ Council Res, para 10.1

⁹ Council Res, para 10.2

¹⁰ Council Res, para 10.3

GFIS, and undermined the authority of Council, the Speaker of Council acting in terms of her powers in section 18 of the Amended Municipal Structures Act 03 of 2021 authorises that this matter be investigated:

- 4.1. An official from the Legal Services department addressed a legal opinion and advised that the law would not allow an automatic promotion of a former employee from the position of the Unit Head of the GRAS department to the Group Head of the GFIS. And for some reason, this opinion was not adhered to when the GFIS became a separate department and its own Head of Department (HOD). And also the legally prescribed recruitment processes and approval of his employment as an HOD were completely disregarded.¹¹
- 4.2. A whistleblower had provided an audio recording which contained evidence of prima facie improper and unlawful conduct of former Group Head of GFIS, The former City Manager then launched an investigation into that evidence through Bowmans Attorneys, and it made adverse findings in its final report. And for some reason, this report was shelved, and instead, an arrangement was made that the whistle-blower who had been unlawfully suspended and constantly harassed by the former Group Head of GFIS be redeployed to other departments within the City, and no action was taken against him.¹²
- 4.3. When the former Executive Head in the City Manager's Office compiled a letter for the City Manager which was forwarded to the former Group Head of GFIS to notify him that he had no authority to investigate senior managers, he retaliated by launching a covert operation against the Executive Head in the Eastern Cape. The Executive Head discovered this operation and reported it to the former Executive Mayor, and he instructed the former City Manager to act against the former Group Head of GFIS. This instruction was never implemented, and again no action was taken against the former Group Head of GFIS.¹³

¹¹ Council Res, para 13.1

¹² Council Res, para 13.2

¹³ Council Res, para 13.3

- 4.4. The letter of the Public Protector (“PPSA”) which had confirmed that certain incriminating evidence on the questionable employment and operations of the former Group Head of GFIS was allegedly concealed from her investigation was never submitted to the Council. And instead, the former Executive Mayor Group Head of GFIS issued media statement, and held press briefings, and made certain public misrepresentations claiming that the said official was cleared by the PPSA. The effect of the concealment of this letter from Council, is that, the City has been deprived an opportunity to investigate this concealed evidence, and take further action if it becomes necessary.¹⁴
- 4.5. The letter of and State Security Agency (“SSA”) which confirmed that the former Group Head of GFIS was in possession of snooping electronic device called the Digital Forensic Equipment (“DFE”) which is used to conduct crime intelligence and investigation activities, and which in terms of legal requirements must be controlled by law enforcement officers was concealed from Council, And instead, the former Executive Mayor and Group Head of GFIS issued media statements and held press briefings, and made certain public misrepresentations claiming that this official was cleared by the SSA. The effect of the concealment of this letter from Council, is that, the City has been deprived an opportunity to investigate the concealed evidence, and take further action if it becomes necessary.¹⁵
- 4.6. The section 106 notice investigation of the MEC for Local Government in Gauteng into the allegations that former Executive Mayor and MMC for Corporate Services used an unlawful report of GETS to obstruct Council from appointing one of the complainants in the position of the City Manager, was allegedly frustrated by the former Executive Mayor. She deposed to an affidavit as the leader of the DA and challenged the said appointment in Court hoping to stave-off the investigation. The effect of this opportunistic litigation is that, the MEC had to suspend the investigation. process, pending the outcome of the said court proceedings. And once again, the Council has been deprived of another opportunity of holding those who committed the said unlawful

¹⁴ Council Res, para 14.1

¹⁵ Council Res, para 14.2

obstructive acts accountable.¹⁶

AVERMENTS AGAINST EXECUTIVE MAYOR & MMC FOR CORPORATE SERVICES IN THE FURTHERANCE OF THE PROTECTION OF THE FORMER GROUP HEAD OF GFIS

5. Complaints were submitted to the former Executive Mayor (Mpho Phalatse), MMC for Corporate Services (Cllr Leah Knott) and the Speaker of Council (Da Gama) that also suggested that the purported investigative powers of GFIS were allegedly used to conduct rogue, clandestine and unlawful investigations. However, the former Executive Mayor and the MMC for Corporate Services failed to act on allegations and those specifically made against the former Group Head of GFIS and ensured that in return they would not be investigated by GFIS after they had committed the following alleged unlawful acts:
 - 5.1. The alleged implementation of a fronting arrangement to have a service provider of choice of the former Executive Mayor (Cllr Mpho Phalatse), which was not on the approved panel of the City to receive investigative work through a company that was on the panel.¹⁷
 - 5.2. The appointment of the City Manager by the former Executive Mayor (Cllr Phalatse) and the MMC for Corporate Services (Leah Knott) to oust one of the complainants who was the recommended candidate for the said position. This was allegedly realised by concealing an investigation report which had cleared the complainant from certain allegations. They then submitted a misleading report which stated that he has not been cleared, and the position must be readvertised. This conduct was referred to the Ethics Committee and Independent Investigator for an investigation and no progress has been reported so far.¹⁸
 - 5.3. The alleged victimization by the former Executive Mayor (Cllr Phalatse), the MMC for Corporate Services (Leah Knott), the Chairperson of the Group Audit Committee (Lerato Nage) and the Acting Head of GFIS (Lizzy Ramogale) of

¹⁶ Council Res, para 14.3

¹⁷ Council Res, para 11.1

¹⁸ Council Res, para 11.2

another senior official who was investigating the unlawful expenditure that was incurred by GFIS. It is alleged that when she discovered tens of millions of concealed unlawful expenditure by the former Group Head of GFIS, she was then subjected to a rogue, clandestine and unlawful investigation and sustained media attacks. It is further alleged that when she was cleared the investigation was not closed, and instead other allegations were generated.¹⁹

THE ALLEGED MANIPULATION OF PROCESSES AND STAGING OF RETALIATORY ACTS BY CERTAIN PERSONS TO DETRIMENT THE CAREERS AND REPUTATIONS OF COMPLAINANTS

6. It would seem that after the submission of a complaint by one of the complainants and reported that a rogue, clandestine and unlawful investigation were used against him for the purpose of ousting him from recruitment processes for the position of the City Manager, the following acts were allegedly implemented to detriment his career and reputation, namely:

6.1. A legal opinion was sought by the previous Executive Mayor and MMC for Corporate Services from a Senior Counsel regarding the prospects of him succeeding to challenge the recruitment processes. And when this legal opinion confirmed that the complainant may succeed, it was shelved. Then they sought a second one from another Senior Counsel, and when this second legal opinion required them to make uncomfortable disclosure to the Council, it was shelved, and was never presented before Council for its consideration.²⁰

6.2. They then caused Council to launch a second investigation against the complainant and reinvestigate the same allegations which were reported by the complainant has having been generated from an investigation that was rogue, clandestine and unlawful, It is also alleged that when he was cleared by the second investigation, the former Executive Mayor and MMC for Corporate Services concealed the report from the Council and instead, they issued media statements and sought to keep the cleared allegations alive.²¹

¹⁹ Council Res, para 11.3

²⁰ Council Res, para 16.1

²¹ Council Res, para 16.2

- 6.3. They further submitted a misleading report in Council to readvertise the City Manager position in which the complainant had been recommended for, and claimed that he was not cleared by the second investigation. And during the shortlisting for the readvertised position, the complainant was excluded on the basis that he did not qualify. And instead, a candidate whose competency assessment report and prescreening employment report from GFIS rendered him unsuitable was recommended for the City Manager position.²²
7. Regarding another complainant who had reported that he was also being subjected to rogue, clandestine and unlawful investigations by the former Group Head of GFIS, the following acts were allegedly acts to detriment his career and reputation were also implemented, namely:
- 7.1. anonymous google mails with new allegations against another complainant were sent to the former Executive Mayor and Group Head of GFIS. They instructed a law firm to launch a second investigation against that complainant. A report in respect of the first investigation which he had reported as rogue, clandestine and unlawful was being finalised, and his complaint in respect of that investigation was allegedly disregarded by the former Executive Mayor, MMC for Corporate Services and Speaker of Council.²³
- 7.2. When the complainant resisted being subjected to further rogue, clandestine and unlawful investigations, and reported the former Group Head of GFIS, Executive Mayor and Speaker of Council to the Ministers of COGTA and the Police, the former Group Head of GFIS issued various threatening WhatsApp messages which called for the complainant to be dealt with during the recruitment processes for the two positions in which the complainant had been shortlisted. When there were signs that the complainant was being dealt with, during the recruitment processes, he withdrew his applications.²⁴
- 7.3. With his applications withdrawn, the former Executive Mayor and MMC for

²² Council Res, para 16.3

²³ Council Res, para 17.1

²⁴ Council Res, para 17.2

Corporate Services attempted to table before Council the unlawful investigation report of GFIS against the complainant. They later withdrew the said report following a written complaint of a former Councillor of the DA who was implicated in the report. They then instructed that the allegations in the said report pertaining to their colleague from the DA be excluded with the view to resubmit the report before Council. The complainant resigned. Five months after the complainant had resigned, the former Executive Mayor and MMC for Corporate Services attempted to table the said report, but the current Speaker of Council refused to table the report on the basis that it was a subject of a complaint.²⁵

8. Submitted complaints further indicate that counter-measures were deployed to stave-off possible investigations into the questionable employment and operations of GFIS. Firstly, these appeared to have been allegedly targeted on implementation of a full investigation which had been recommended in a preliminary report by Zebediela Attorneys (“Zebediela Report”), as follows:

8.1. The said report was submitted to the former Speaker of Council and Executive Mayor, and they did not table it in Council for its consideration and further investigation as recommended thereto. And instead, the former Executive Mayor unlawfully procured some questionable legal opinion from a firm of attorneys that were not in the approved panel of the City, and which seemingly advised her not to table the report in Council.²⁶

8.2. The former Group Head of GFIS also launched review application against the said report, and one of the complainants who was an Acting City Manager authorised a firm of Attorneys to oppose the said review application. Further, then solicited and received a legal opinion from a senior counsel who advised that the former Group Head of GFIS does not have a case against the City, and he must be suspended and the decision to oppose his application must be proceeded with. And once the complainant was removed from the acting position, the attorneys and counsel were also instructed to withdraw from

²⁵ Council Res, para 17.3

²⁶ Council Res, para 19.1

opposing, and the matter was heard unopposed in favour of Mr Sibiya.

8.3. While the said proceedings were still pending, the newly appointed Acting City Manager authorised another firm of attorneys review the said report. This firm recommended that the recommendations made in the Zebediela Report which included that a full investigation be conducted should not be implemented. This is despite the obtained legal opinion from a senior counsel having confirmed that the allegations made in the Zebediela Report are of serious nature and must be investigated, and the former Group Head of GFIS must be suspended.²⁷

9. It also appears that the above alleged rogue, clandestine and unlawful investigations were concealed from Council by eliminating any form of political opposition against GFIS. In this regard, it alleged that political leaders from the minority parties in the Municipal Council who were opposed to the above conduct of GFIS were subjected to retaliatory investigations as follows:²⁸

9.1. The former MMC for Development Planning and current caucus leader of the DA raised certain allegations against councillor Thapelo Amad from Al-Jamah who was at the forefront of questioning the alleged improper and unlawful conduct of GFIS. Interestingly, the former MMC for Development Planning instead of reporting her allegations to the Ethics Committee, she reported them to GFIS. This is despite her knowing that Cllr Amad have issued various media statements and briefings and exposed the special treatment which was given to the former Group Head of GFIS by the former Executive Mayor.²⁹

9.2. It also noted that in the same period, other allegations of fraud and corruption were raised against Cllr Magaret Arnolds were reported to GFIS and not the Ethics Committee. Similarly, it was known as a matter of fact that Cllr Arnolds was one of those who were at the centre of the campaigns that challenged the alleged improper and unlawful conduct of GFIS. This is because those who made those allegations knew that Cllr Arnolds have also issued various media

²⁷ Council Res, para 19.2

²⁸ Council Res, para 20

²⁹ Council Res, para 20.1

statements and held press briefings which publicly exposed the unlawful conduct of the former Group Head of GFIS.

9.3. In the same period, an intelligence styled 200 page investigation report on the personal affairs and business dealings of the former Chair of Chairs, Cllr Colleen Makhubele also emerged. This report appeared after Councillor Makhubele had recorded her objection in a meeting of the DA-led multi-party coalition regarding the concealment of reports from Council regarding the alleged unlawful conduct of GFIS. This report was concluded when Cllr Makhubele had decided to join the forces that were advocating for a regime change, and was involved in certain political negotiations which resulted in her making a political shift that will catapulted her to the position of Speaker of Council.

9.4. Councillor Margaret Arnolds was one of the people who challenged the alleged improper and unlawful conduct of GFIS. She issued various media statements and held press briefings which publicly exposed the unlawful conduct of the former Group Head of GFIS. In response, allegations of fraud and corruption were made against her and reported to GFIS, instead of to the Ethics Committee.³⁰

9.5. Councillor Colleen Makhubele had recorded her objection, in a meeting of a DA-led multi-party coalition, to the concealment of reports from Council on the alleged unlawful conduct of GFIS. Suddenly, a 200-page intelligence investigation report on her personal affairs and business dealings emerged. The report surfaced after she joined others who were advocating for a regime change and also was involved in political negotiations which secured her appointment as Speaker of Council.³¹

10. These Terms of Reference may be added to, varied and/or amended from time to time.

11. All Municipal structures, officials, Councillors and staff members are required to

³⁰ Council Res, para 20.2

³¹ Council Res, para 20.3

cooperate fully with the SIIC.

12. The Municipal Systems Act, Municipal Structures Act, Disciplinary Regulations, Code of Conduct for Councillors, Standing Rules and Orders of Councillors and Code of Conduct of Staff Members shall apply to the SIIC, subject to such amendments and exemptions as may be effected from time to time.
13. SIIC shall finalise its mandate within a period of six (6) months from the date of commencement of its function, subject to such extensions as may be necessary. SIIC shall submit its report and recommendations to the Municipal Council within 120 days of the finalization of the investigation and hearings to be conducted.
14. The SIIC shall, where appropriate, refer any matter for further investigation, or the convening of a separate enquiry or disciplinary action to the appropriate Municipal Structures regarding the conduct of certain person/s.
15. The SIIC shall make Rules for the conduct of its proceedings, which Rules shall apply to the SIIC to enable the SIIC to conduct its work and investigation in a meaningful, effective and proper manner and to facilitate the gathering of evidence by conferring on the SIIC such powers as are necessary, including the powers to enter, secure the attendance of witnesses and compel the production of documents.

Signed on this 5th day of August 2024



MARGARET ARNOLDS
Speaker of Council
City of Johannesburg Metropolitan Municipality